

200729039



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

APR 23 2007

Uniform Issue List: 408.03-00

SE: T; EP: RA: TA

Legend:

Taxpayer A=

Amount B=

IRA X=

Bank D=

Bank E=

Broker G=

Date H=

Date I=

Date= J

Date K=

Date L=

Date M=

Date N=

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Date O=

Date P=

Date Q=

Date R=

Date S=

Dear :

This is in response to your request of , through your authorized representative, for a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age , represents that she received a distribution from IRA X totaling Amount B. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to family medical events which required Taxpayer A's full-time care. Thus, she was unable to focus on the administrative requirements by Broker G regarding her intended rollover of Amount B.

On Date H Taxpayer A's husband underwent unsuccessful prostate cancer surgery. On Date I Taxpayer A went to Bank D and withdrew Amount B from IRA X. On Date J, Taxpayer A deposited Amount B into her checking account with Bank E and planned to rollover Amount B into a rollover IRA with Broker G. On Date K Taxpayer A wrote a check drawn on Bank E for Amount B payable to Broker G, and mailed it to Broker G with other pertinent documentation to rollover Amount B into a rollover IRA at Broker G. Submitted documentation shows that Broker G received the correspondence on Date L. On Date M, however, Broker G returned all correspondence to Taxpayer A because the IRA Application Form was not properly completed. On Date N the son of Taxpayer A began feeling ill which resulted in a crisis requiring medical emergencies and hospitalization on Date O. On Date P Taxpayer A was able to complete the IRA paperwork and mailed it, again, to Broker G to establish a rollover IRA. Broker G received the documentation on Date Q. However, on Date R, Broker G again returned the correspondence, including Taxpayer A's check for Amount B, because the selected investment funds by Taxpayer A were no longer available at Broker G. Due to the

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existing medical emergencies of Taxpayer A's husband and son, Taxpayer A was unable to review the latest correspondence from Broker G until Date S which was the date on which the 60-day rollover period elapsed. Amount B remains in Taxpayer A's checking account and has not been used for any other purpose.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to Amount B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if—

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

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Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by family medical events which resulted in her being unable to focus on the administrative requirements of Broker G regarding her intended rollover of Amount B. Her intent to rollover Amount B was clearly indicated by her two unsuccessful attempts within the 60-day period to rollover Amount B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount B into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, these amounts will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

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If you wish to inquire about this ruling, please contact \_\_\_\_\_, at  
Please address all correspondence to SE:T:EP:RA:T:A

Sincerely yours,

*for* *Ada Perry*  
Donzell Littlejohn, Manager  
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: